

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAZON (ARIZONA), Inc.,

Plaintiff,

v.

MICHAEL D. MOORE,
d/b/a JMC Fun Center,

Defendant.

Case No. 5:06-CV-24

Hon. Richard Alan Enslen

ORDER

Plaintiff Dazon (Arizona), Inc. has moved for relief pursuant to Federal Rule of Civil Procedure 60. The Motion for Relief is premised on Federal Rule of Civil Procedure 60(b)(1) and claims “surprise” because the Court’s Electronic Case Filing (“ECF”) system failed to deliver an e-mail message to Plaintiff’s attorney advising of the entry of the February 5, 2007 Order to Show cause.

Plaintiff’s Motion is a surprising one because the Court’s electronic docket record system shows, under its “display receipt” functionality, that electronic delivery of the February 8, 2007 Order to Show Cause was made to the attorney (Bree Danyell Vincent) at her law office e-mail account (bvincent@marcouxallen.com) on the date in question. The Court’s Information Technology (“IT”) Department has no record of any delivery problems for the document in question. Furthermore, the IT Department has conducted an electronic study of the deliveries in question and has confirmed that both the e-mail messages for the February 5, 2007 Order to Show Cause and the March 9, 2007 Judgment were received by the law firm’s server. As such, any non-delivery is not

the result of a sending error by the District Court and is not a proper basis for a claim of “surprise.”
See also Easley v. Kirmsee, 382 F.3d 693, 698-99 (7th Cir. 2004) (holding that attorney inattentiveness does not justify relief under Federal Rule of Civil Procedure 60(b)(1)).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Dazon (Arizona), Inc.’s Motion for Relief from Order of Dismissal (Dkt. No. 12) is **DENIED**.

Dated in Kalamazoo, MI:
April 5, 2007

/s/Richard Alan Enslen
Richard Alan Enslen
Senior United States District Judge